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August 14, 2008

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: **Notice of Written and Oral Ex Parte Communication – WC Docket No. 07-245**

Dear Ms. Dortch:

Please accept this letter, filed pursuant to Section 1.1206 of the Commission's Rules, as notice that on August 13, 2008, the undersigned attorneys for the Coalition of Concerned Utilities ("*Coalition*"),<sup>1</sup> met with Greg Orlando, Legal Advisor to Commissioner Tate, and Nick Alexander, Legal Advisor to Commissioner McDowell. At the meeting, we distributed and discussed the following documents (copies attached):

- A one page document, entitled "***Top Ten Cable/CLEC/ILEC 'Myths' About Pole Attachments.***"
- Declaration of Dennis R. Krumblis of Buford Media Group LLC.
- An Ex Parte letter from the *Coalition* to the Honorable Kevin J. Martin, dated June 3, 2008, regarding the issues raised in this proceeding;
- A one page document, entitled "***Pole Attachments At A Glance;***" and
- A two page handout describing the FCC's Pole Attachment Rate Formula and the Coalition's recommendations for removing unfair subsidies when establishing a single, new broadband rate.

We discussed the attached list of ***Top Ten "Myths,"*** which is a compilation of misleading and inaccurate arguments presented in various forms during the above-referenced proceeding by ILEC, CLEC and Cable attachers to justify unwarranted subsidies and irresponsible, dangerous pole attachment conditions. Our discussion then focused primarily on rate issues. We described how the electric utility industry and its consumers have provided a colossal subsidy to cable and telecom attachers for years.

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<sup>1</sup> The Coalition for Concerned Utilities is comprised of Allegheny Power, Baltimore Gas and Electric Co., Dayton Power and Light Co., FirstEnergy Corp., Kansas City Power and Light, National Grid and NSTAR.

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We discussed how fairer pole attachment rates will not impede the deployment of broadband services in rural areas. We described a Declaration of Dennis R. Krumblis of Buford Media Group LLC ("Buford"), submitted by the Arkansas Cable Telecommunications Association last month in an ongoing proceeding before the Arkansas Public Service Commission, that makes clear that the primary reason the cable industry does not deploy high speed broadband service in rural areas is the enormous expense associated with head-end equipment installation and system upgrades – not the relatively minute costs associated with pole attachment rentals.<sup>2</sup>

As explained by Mr. Krumblis, Buford serves approximately 500 customers per head-end in rural Arkansas, but the head-end electronics for broadband cost at least \$35,000, and system upgrade costs would add \$3,000 per mile to \$10,000 per mile. Considering that in rural Arkansas there may be roughly 18 poles per mile and Mr. Krumblis' statement that Buford averages 2 to 3 poles per customer, the additional per customer cost for Buford to begin offering broadband service to its customers is somewhere between \$1,116.67 and \$2,088.89 per customer.

In striking contrast, Buford's annual pole attachment costs are expected to increase from \$6.00 to \$15.84 per pole. With an average of 2.5 poles per customer, that represents an increase in Buford's annual per customer pole attachment cost allocation of \$24.60. This annual increase of \$24.60 per customer represents somewhere between 1.2% and 2.2% of the total per customer cost of upgrading facilities to provide broadband service.

Stated another way, the capital costs for the average Buford rural system to provide broadband are anywhere from **45–85 times** higher per customer than the increase in annual pole attachment costs.

Thus, as shown by Mr. Krumblis, it is the rural nature of Arkansas, not unfair pole attachment fees, that is impeding the spread of broadband services throughout the state.

Moreover, as explained in our meeting with FCC Staff, only a small portion of the subsidy that the cable industry is demanding for cable operators will flow to the smaller cable systems like Buford. It would do almost nothing to resolve Mr. Krumblis' predicament for Buford, but it would vastly enrich Comcast and other urban and suburban cable systems that service the great majority of cable subscribers in the country and are not struggling to survive.

Unlike largely unregulated entities like Comcast, pole attachment rental fees are used to offset revenue requirements for electric utilities across the country, and electric consumers will

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<sup>2</sup> In The Matter Of A Rulemaking Proceeding To Establish Pole Attachment Rules In Accordance With Act 740 of 2007, Arkansas PSC, Docket No. 08-073-R, Initial Comments of Arkansas Cable Telecommunications Association, Exhibit D (May 13, 2008).



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benefit “dollar for dollar” in the form of lower electric utility rates as pole attachment rental rates are increased appropriately to reflect a fairer allocation of costs.

Under the Commission’s pole attachment rules, attachers avoid all costs necessary to construct their own pole distribution systems and pay a disproportionately small percentage of expenses necessary for electric utilities to construct and operate one on their behalf.

Cable companies are required to pay only 7.4% of the costs associated with the common space on a pole (which is inappropriately termed “unusable” space in the Commission’s rules) that is necessary to stabilize the pole, elevate all attachments, and provide 40 inches for the “communications worker safety zone” that would not be needed at all but for the presence of communications workers near energized utility lines. All aerial attachments clearly benefit from this common space, but electric utilities are required to bear the great bulk of these costs. The cable industry gets a virtual “free ride.”

The Telecom attachment rate is an improvement since it allocates 2/3 of most common space costs equally, but it still fails to require that all common costs be shared equally nor does it reflect the full value of the pole distribution system to telecom attachers or the significant costs that they avoid by not being required to build their own pole distribution systems. They, too, are permitted to climb on board utility pole distribution systems for a fraction of the fair cost. Additionally, the FCC’s “presumed number of attachers” of 3 or 5 (based on whether a system is “rural” or “urban”) falsely inflates the number of attachers used for rate calculation purposes and thereby reduces the applicable Telecom rate, all to the detriment of electric utilities and their rate payers.

During our meeting, we explained that to the extent that government mandated subsidies were appropriate to jump-start the cable and telecom industries in the early days of pole attachments, those days are long gone. Yet Comcast, Time Warner Telecom and other media giants continue to get access to the most basic component of “their” pole distribution systems for an artificially low, government-mandated fee that unfairly discriminates against electric utilities and their consumers.

We explained that the “joint use” relationship between electric utility and incumbent local exchange carrier (“ILEC”) pole owners is a completely different relationship than the third party attachment agreements between pole owners and cable operators or competitive local exchange carriers (“CLECs”). We explained the “shared use” history of the joint use relationship and the advantages that ILECs have as pole owners, which cable operators and CLECs do not have as mere “licensees.”

We pointed out that the FCC lacks statutory jurisdiction over the joint use relationship and that the ILECs’ newly discovered interpretation of the Pole Attachment Act is ridiculous.

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Addressing the ILECs' arguments regarding "rate parity," we explained that the advantages enjoyed by ILECs in joint use agreements requires that they pay a higher rate than cable companies and CLECs, and that the mutual dependency and arms' length nature of the joint use relationship would establish a fair rate by itself, so that FCC intervention is unnecessary even if the Commission did have statutory jurisdiction.

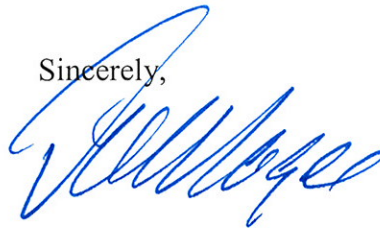
We explained that the *Coalition* supports the Commission's efforts to create a single, broadband rate, but electric consumers should not be subsidizing broadband companies. The *Coalition's* proposed rate for broadband attachers (adopted by the City of Seattle and affirmed by the Washington State courts) eliminates the historic subsidy of cable and telecom companies by requiring that costs associated with 100% of the common space on poles (including the "communications worker safety zone" space) be shared equally by and among all attachers. Anything less than an equal sharing of costs related to the common space on the poles will result in an unjustified subsidy to whichever industry is favored by the Commission.

We explained that unauthorized attachments and safety violations by communications attachers are a serious problem that results from the lack of any existing regulatory mechanism to ensure responsible behavior. Meaningful sanctions are needed to allow utilities to police their systems.

Finally, we explained that attacher compliance with the National Electrical Safety Code was not enough, since the NESC establishes only minimum safety standards and is not an operational guide or design manual. Utilities must be allowed to enforce their own utility-specific standards.

We appreciate the Commission's interest in this important proceeding. Please feel free to contact the undersigned if you have any questions or require any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "T. Magee", written over the word "Sincerely,".

Thomas B. Magee  
Jack Richards

Attachments

cc: Greg Orlando  
Nick Alexander



# Top 10 Cable/CLEC/ILEC "Myths"

## About Pole Attachments

### 1. "Continued Pole Attachment Rate Subsidies Will Bring Broadband to Rural America"

- The cable subsidy has been around since 1978, and cable still has not deployed broadband in rural areas.
- The main obstacle to rural broadband deployment via cable is the huge cost of headend equipment and system upgrades, not attachment fees.
- If broadband is not being provided now, it's not because of pole attachment rates.

### 2. "Attachment Subsidies Mainly Benefit Small Cable Operators"

- Pole attachment subsidies mainly benefit gigantic communications companies – not small cable operators – that are attached to the most poles.
- Electric ratepayers subsidize Comcast (with revenues of \$30.9 billion and profits of \$2.6 billion in 2007) and other huge companies while a miniscule portion goes to small cable operators.

### 3. "The FCC Cable Rate is Not a Subsidy"

- The current, low cable rate was designed "to spur the growth of the cable industry, which in 1978 was in its infancy." (H.R. Report No. 104-204, at 91)
- Thirty years later, cable pole attachment rates remain a pittance, even during an energy crisis.
- Cable pays full value for programming, fiber optic equipment, office leases, salaries, etc. – but pays far below fair value for its use of the utility industry's fully-constructed pole distribution system.

### 4. "ILECs Should Pay the Same Attachment Rate as Cable and CLECs"

- Granting ILECs the same rate as cable and CLECs grants them a huge, anti-competitive advantage.
- ILEC advantages already include reduced make-ready costs, no pre-approval to attach, easements, reserved space on the pole for future use and avoided relocation and rearrangement costs.

### 5. "ILECs are Entitled to Regulated Attachment Rates"

- Since the Telecom Act of 1996, everyone – including ILECs – has known that this is false.
- The ILEC'S epiphany of regulated rates after 12 years is ludicrous; neither statutory language nor FCC precedent supports it.
- For almost 100 years, Joint Use arrangements have flourished without government imposed rates.

### 6. "Sanctions are Unnecessary Because Attachers Follow the Rules"

- Attachers do not follow the rules.
- Attachers have no regulatory incentive to act responsibly; the FCC authorizes no enforcement penalties for unauthorized attachments (beyond back rent that should have been paid in the first place) or safety violations.
- Substantial penalties in Oregon have reduced unauthorized attachments from 30% to 1%.

### 7. "Utility Claims of Unauthorized Attachments are Trumped-Up"

- Toledo Edison – 29% - 33% unauthorized attachments.
- Progress Energy – 33,350 unauthorized attachments.
- Tampa – 26,000 unauthorized attachments.
- Oncor – 30,000 unauthorized attachments.

### 8. "Wireless Attachments Must be Permitted On All Pole Tops"

- Wireless attachments are different than wireline attachments.
- Wireless attachments raise a host of complex issues regarding electric service reliability, operations, maintenance, and worker safety.

### 9. "One-Size Regulation for Boxing, Make Ready, etc. Fits All"

- Attachers do not know better than utilities how to construct and operate electric distribution systems.
- Utilities must be free to decide for themselves how to build their distribution systems.
- Existing FCC complaint procedures provide relief, if necessary.

### 10. "The NESC is Good Enough"

- THE NESC is a minimum safety standard, not an operational guide or design manual.
- The NESC does not address ice, wind, lightning, grounding, soil, animal, tree or other issues unique to particular geographic areas or utilities.
- Utilities must be free to exceed the NESC and establish system-specific operational and design standards.

### For Further Information

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Prepared by the "Coalition of Concerned Utilities" (Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, Kansas City Power & Light, National Grid, and NSTAR). Collectively, the Coalition serves approximately 12,800,000 electric customers and owns, in whole or in part, more than 7,200,000 electric distribution poles. The Coalition is concerned that the Federal Communications Commission's Notice of Proposed Rulemaking in WC Docket No. 0-245 may exacerbate an already troubling pole attachment and joint use regulatory environment and jeopardize the safe and efficient operation of the nation's electric utility distribution systems.

**BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION**

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| <b>IN THE MATTER OF A RULEMAKING</b>  | ) |                            |
| <b>PROCEEDING TO ESTABLISH POLE</b>   | ) | <b>DOCKET NO. 08-073-R</b> |
| <b>ATTACHMENT RULES IN ACCORDANCE</b> | ) |                            |
| <b>WITH ACT 740 OF 207</b>            | ) |                            |

**DECLARATION OF DENNIS R. KRUMBLIS**

I, Dennis R. Krumbliis, hereby declare the following:

1. I offer this Declaration in support of the Initial Comments of the Arkansas Cable Telecommunications Association submitted in the above-captioned matter.

**Background and Experience**

2. I have 30 years of experience in the cable television and multi-channel video industry, and am a member of the Society of Cable Telecommunication Engineers and Society of Broadcast Engineers. Presently, I am Vice President of Engineering of Buford Media Group LLC ("Buford"), with responsibility for the engineering and deployment of new services the company plans to offer, and the evaluation of new technology to further enhance the company's offerings. Among other duties, I am charged with oversight of the construction and placement of cable television ("CATV") facilities on utility poles by Buford's cable systems operated by its Alliance Group, and by the Allegiance Group that Buford manages.

3. Before joining Buford in 2003, I was owner and President of Sierra Broadband Services, a media construction and consulting firm that provided a wide array of CATV-related services, including digital video systems design and construction for National TeleConsultants, project management and deployment of digital video and high-speed internet services for Classic Cable and US Online, engineering and consulting for Classic Cable and Buford Media Group,

and video backhaul support for FOX Sports, CBS Sports, and America One Television. Prior to starting Sierra in 2000, from 1998 to 2000, I was Director of Technical Operations for Nucentrix Broadband Networks, where I had responsibility for the video operations group of Heartland Cable Television, and supported the deployment of wireless high-speed internet in Sherman and Austin, Texas. From 1990 to 1998, I was the Director of Engineering for CableMaxx and CS Wireless Systems, and was responsible for the engineering, deployment and operation of multi-channel multipoint distribution service ("MMDS") systems in Texas.

4. I began my career in 1978 with Warner Amex Cable as a Technician and later became a Plant Supervisor in Houston, Texas, where I played a key role in building the QUBE Cable system, one of the nation's first two-way interactive cable television systems. In 1984, I joined Harte Hanks Cable, where I was responsible for the operations management of 14 cable systems in Texas.

### **Introduction**

5. Buford is a rural cable operator or, more specifically, a cable operator that serves (through its partner subsidiaries) rural areas in Arkansas, Oklahoma, Kansas, Texas and Missouri. Buford's footprint is 100% rural. In Arkansas, Buford serves through its Alliance Group approximately 5,000 subscribers, and through the Allegiance Group that it manages, another 20,000 subscribers, for a total of 25,000 subscribers in Arkansas. Buford is committed to serving rural Arkansas. Buford officials are active participants in industry-recognized associations for rural system operators, such as the National Cable Television Cooperative and the American Cable Association.

6. The Commission's current pole attachment rulemaking comes at a time where many of the countries' traditional CATV services in rural America are struggling to stay afloat,



due to the various challenges (primarily economical) of serving rural areas. Many rural systems have no current capacity to add broadband and other advanced services, and, as a result, have suffered large subscriber losses, mainly from competition from direct broadcast satellite ("DBS") providers. Most of the time, these systems, standing on their own, do not make business sense to maintain or operate, and often get shut down or sold as part of a package to other companies. Eventually, without some kind of capacity upgrade – and, significantly, follow-through on the promise of broadband for rural America – these systems will die a slow death as competition erodes the subscriber base.

7. That said, Buford has aggressively pursued bringing advanced video and broadband services to rural America, including in Arkansas. In 2005, Buford was awarded the "Independent Operator of the Year" by *Cable World* magazine, mainly for its efforts to deliver broadband to rural America and the leadership role it has assumed in the rural telecommunications arena. With our primary focus on rural systems, Buford's affiliates have purchased CATV systems in small, underserved markets in the nation's heartland, including Arkansas, with the intention of adding advanced video and broadband services to those systems. Many of these systems are over 25 years old and currently have no additional capacity to add new services, without upgrades.

8. Buford's average rural system in Arkansas serves approximately 500 customers per headend, with some serving as few as 50 customers. By comparison, larger systems, such as those in and around Little Rock, might serve 30,000 customers per headend, or even more. Buford's systems pass approximately 30 to 35 homes per mile, with those in more densely populated areas topping out at 20 homes per mile. Cable systems in urban areas might pass 50 homes or more per mile. With respect to CATV plant attached to utility poles, Buford averages



2 to 3 poles per customer; conversely, operators in more densely populated areas might have one pole – or a fraction of a pole – per customer. Pole rental rates and other fees and costs associated with pole attachments can have a significant impact on rural broadband deployment if not kept at reasonable levels, as discussed in greater detail below.

9. In addition to pole attachment costs, head-end electronics necessary to deploy any cable system also have a greater cost impact in rural areas. For example, head-end electronics for broadband cost at minimum approximately \$35,000 – dividing that by 500 subscribers served by a rural headend results in a \$700 per customer allocation of that expense. For comparison's sake, dividing that amount by 30,000 customers at an urban head-end is just over a dollar a customer (in reality, the costs of head-end electronics to serve a more urban area could be several times the minimum above, but even so the per-subscriber cost is only a few dollars a head). Similarly, while plant upgrade costs vary based on age of plant, plant condition, and system architecture, it also varies based on customer base density, such that costs can range from \$3,000 per mile to \$10,000 per mile. Naturally, there are some expenses that increase as the number of homes passed or customers served increase, but for all cost inputs not affected by the incremental addition of each customer, there are far fewer customers over which to amortize overall plant deployment costs in rural areas.

#### **Buford's Experience Attaching to Electric Utility Poles and With Utility Support Systems**

10. In order to provide its communications services, including broadband Internet, Buford must attach a considerable amount of its equipment to poles owned by two Arkansas electric cooperatives – First Electric in Perryville and Petit Jean Electric in Greer's Ferry – and by investor-owned Entergy Corporation. Over the last several years, Buford's pole attachment costs have skyrocketed, particularly with regard to Buford's attachments on First Electric's

poles. I attribute this to First Electric's engagement of a contractor known as Utility Support Systems, Inc. ("USS"), which recently conducted a billing audit of Buford's attachments and a safety inspection of all the facilities on First Electric's poles. Buford was unable to participate in either the pole count audit or inspection because USS sends out multiple inspectors concurrently. Buford simply does not have that kind of manpower on hand. Buford was therefore pleased to see Staff's Proposed Rule 3.03, which requires all the parties on a pole to conduct joint audits and inspections and requires the pole owner to incur its own inspection costs. I am hopeful that this will alleviate some of the cost and other issues that have arisen due to the hiring of third party contractors, as described below.

11. Prior to the USS audit, in 2006, First Electric billed Buford for 2,515 attachments per year. As a result of the audit, our attachment count with First Electric nearly doubled, from 2,515 to 4,907 "attachments."

12. Our review of the survey results confirmed that this substantial increase predominantly was attributable to the manner in which USS/First Electric defined "attachment," which included equipment for which First Electric did not require us to obtain a permit. In the past, First Electric only counted the bolt, attaching our mainline strand to the pole, as an attachment for rental rate purposes, and the bolt attachment was the only kind of attachment that required a permit. As far as I know, it is standard industry practice to count only the strand attachments for rental rate purposes. (Indeed, I am concerned that if the proposed definition of "Pole Attachment Audit" is retained, pole owners will be allowed to charge several rental rates for each pole, no matter how much space we use.) Nevertheless, Buford was forced to pay nearly \$60,000 in rental rate arrears, for these newly identified "attachments," even though we were never required to get a permit for these attachments. This amount is in addition to the

\$73,310 in rent (at \$14.94 per attachment) that we also paid on a going-forward basis, for the 4,907 attachments.

13. Buford just received notice that the rent for 2008 is \$15.58 per attachment. At \$15.58, First Electric's pole rent is 3 times higher than Entergy's rental rate, which is based on the Federal Communications Commission's cost-based cable formula. The rent I am now paying to First Electric in Perryville, represents half the revenue Buford realizes from this system. In 2003, First Electric's pole attachment rate was only \$6.00.

14. Because Buford was unable to participate in the audit, due to manpower issues and the manner in which USS conducted the audit, Buford now must conduct its own "attachment" count to ensure the accuracy of the First Electric/USS results. This is an additional expense Buford can ill-afford to incur, especially after having been presented with, and paying, USS's invoice for the pole count survey and the unexpected additional backwards and going-forward rent.

15. Shortly after USS conducted the pole count survey in Perryville, USS performed a pole safety inspection of the same exact Perryville plant. This time, however, it appears USS inspected all the plant on pole, including that of First Electric and other attachers. Following the safety inspection, Buford received invoices totaling more than \$88,000 for the inspection. When Buford reviewed the data to back up the cost, the "back up" data merely showed dozens of "mileage" charges, at \$00.445 per hour and "inspector" charges at \$53.83 per hour. There are also "clerical" worker charges for \$30.96 per hour. The one critical piece of information the back up fails to show is what was inspected. It is my understanding, however, based on a conversation with USS, that Buford was solely responsible for the cost of the safety inspection, simply because, as USS explained it to me, we were the last attacher on the poles. This is true



even though it appears the inspection included all attachments (including First Electric's) and identified any and all safety violations on the pole (including First Electric's). When questioned on this, USS's response to us was, "get used to it, we're here to stay." I am hoping that the Commission's rules will clarify that each party is responsible for the costs of its own violations.

16. In sum, over the course of calendar year 2007, we received invoices from First Electric/USS totaling \$217,800.53 for the audit, the safety inspection, back rent and going-forward rent (with the additional approximately 2,400 newly identified attachments) on a system that serves only 303 customers, and has an annual gross revenue of only \$154,275. The safety inspection alone cost nearly \$300 per customer. Needless to say, it would be a drastic increase were we to attempt to pass this cost on directly to Buford's subscribers. At the same time, however, it represents nearly sixty percent of the gross revenue for those systems. We were thinking of bringing broadband to Perryville, but as a result of these pole-related costs we have shelved that project – it is not even on the table there, anymore – and I have serious concerns about the economic feasibility of continuing to provide even CATV service in areas in which we are dependent upon First Electric's poles, if pole-related costs such as these continue.

17. The pole attachment agreement Buford has with First Electric also allows the utility to oust Buford's existing attachments – including those we may have paid make-ready to install – if First Electric deems such removal necessary to accommodate its own attachments and/or "affiliate" attachments and/or street lights. If Buford wants to remain on the pole, Buford is the one who is required to pay all the make-ready – including change-outs of entire poles – not only to maintain its own attachment, but to accommodate the other new attachments. I do not think that is reasonable or equitable. I hope the rules address this type of situation.

18. It is my understanding that Staff's Proposed rental rate formula would result in a four-fold increase in Entergy's pole attachment rate. This will present its own set of problems in the areas we serve using Entergy's poles, if Staff's proposal prevails.

**The Challenge of Bringing the Promise of Broadband to Rural Arkansas**

19. When Buford considers acquiring a cable system, we look very carefully at current outside plant conditions to determine the approximate cost of enhancing system capacity and reliability. This includes issues arising under the National Electric Safety Code ("NESC") – and if a system is deemed in too poor a condition from an NESC perspective, we usually avoid purchasing it, where possible. At first, pole rents and pole-related costs were not a factor in our ability to extend broadband to rural communities desperately requesting it – now, it is a significant consideration. In fact, as noted above, pole-related costs have become a significant consideration with regard to whether we can even keep these systems operational, let alone whether we can upgrade to offer broadband over them.

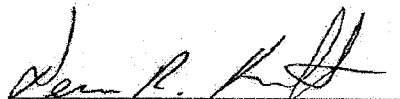
20. I regularly visit, and/or am visited by, mayors of the communities that our cable systems serve, and I appear before city council meetings in which they participate or are present. In cases of communities where we have been unable to extend broadband thus far, one consistent line of inquiry involves when we will be able to make such upgrades (along with those needed for high-definition television, and other services requiring upgraded cable plant). Unfortunately, I am often in the position of having to ask these local officials to be patient, as we continue to try to find ways to provide broadband service to their rural constituents in a way that makes economic sense. When possible, I give approximate timeframes in which we hope or expect to deploy broadband, but sometimes I have to tell them that, despite Buford being one of the most creative companies at pushing broadband down into smaller markets, it is just not economically

feasible to extend broadband services to their communities in the near term. Of course, we always leave the dialog open, and invite checking back with us on a regular basis. Greater certainty regarding pole attachment costs and the confidence that those costs will be reasonable, will, in turn, allow me to provide more certainty to these officials in the future.

21. When over-the-air analogue signals cease in February 2009, Buford would like to be a competitive alternative to DBS providers, which have no pole-related costs or obstacles to service. In fact, only cable customers with analog televisions will still be able to receive analog television service (*i.e.*, they will not need a converter box right away). On the other hand, every television set served by DBS will require a box. In areas where pole-related costs make it too expensive to provide service, however, Buford may not be able to provide the alternative of box-free receipt of broadcast channels.

22. While Buford is committed to bringing broadband to rural Arkansas, we are greatly concerned about our ongoing ability to offer and extend broadband services given the rising costs associated with the unreasonable practices described above and fearful that pole attachment rents and charges could increase even more, under Staff's Proposed Rules. I am hopeful that the Commission will take these considerations into account when issuing its pole attachment rules.

23. I declare under penalty of perjury that the foregoing is true and correct.

  
Dennis R. Krumbly

DATED: May 7, 2008





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June 3, 2008

**Electronic and Hand Delivery**

The Honorable Kevin J. Martin  
Chairman, Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Pole Attachment Rules  
WC Docket No. 07-245  
***Ex Parte Presentation***

Dear Mr. Chairman:

Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, Kansas City Power & Light, National Grid, and NSTAR (the "*Coalition of Concerned Utilities*" or "*Coalition*") serve approximately 12,800,000 electric customers and own, in whole or in part, more than 7,200,000 electric distribution poles. The *Coalition* is extremely concerned that the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding may exacerbate an already troubling pole attachment and joint use regulatory environment and jeopardize the safe and efficient operation of the nation's electric utility distribution systems.

Although the Commission's promotion of cable, telecommunications and broadband services is a worthy goal, the *Coalition* agrees wholeheartedly with your view that it should not occur at the expense of electric utilities and their ratepayers.<sup>1</sup> The cable industry has been benefiting from subsidized Pole Attachment rates since 1978. At this late stage of "CATV" development -- especially in the midst of an energy crisis and deep concerns over raising electric utility rates -- there is no public policy justification for electric utility ratepayers to continue subsidizing communications giants such as Comcast, Time Warner Cable and Time Warner Telecom.

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<sup>1</sup> Statement of Chairman Kevin J. Martin, *Re: Implementation of Section 224 of the Act; Amendment to the Commission's Rules and Policies Governing Pole Attachments*, released Nov. 20, 2007, WC Docket No. 07-245, RM-11293, RM-11303 (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-187A2.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-187A2.pdf)) (last visited March 3, 2008) ("It is ... important that pole owners be properly compensated for the use of their infrastructure by others. I do not think electric consumers should be subsidizing any broadband companies. Establishing parity should not come at the expense of pole owners or electric consumers. ... The safety and reliability of critical electric infrastructure is a paramount concern. Our work on telecommunications reliability should not come at the expense of other public safety systems.").

## KELLER AND HECKMAN LLP

The Honorable Kevin J. Martin

June 3, 2008

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*Ex Parte Presentation*

The *Coalition of Concerned Utilities* implores the Commission not to adopt the cavalier approach of cable companies toward electric utility ratepayers, which is best summarized by the National Cable Television Association (NCTA) when it argues that "Congress has given the Commission no role whatsoever in protecting electric ratepayers."<sup>2</sup> The *Coalition* is encouraged that you appear to disagree, recognizing in your Separate Statement that electric utility ratepayers should not be required to provide subsidies to unregulated, gigantic cable companies.

Poles and conduit are the backbone of electric utility systems. While the electric distribution network is a cheap and convenient vehicle for cable and other communications companies to use as a platform for deploying their own services, by far its primary function is to support the safe and efficient delivery of electric services to consumers across the country. The Commission should protect and defend that function, while ensuring that attachers pay their fair share for their use of electric utilities' pole distribution networks.

### Rates

The electric utility industry has subsidized cable and telecom attachers for years. Under the Commission's pole attachment rules, attachers avoid all costs necessary to construct their own pole distribution systems and pay a disproportionately small percentage of expenses necessary for electric utilities to construct and operate one on their behalf.

The Commission's current pole attachment rate methodology is akin to the utility paying full price for a car while attachers remain free to climb on board and chip in a small percentage annually for gas and other expenses. Not only that, but the car itself (which must be bigger, faster and stronger to accommodate the added passengers) is considerably more expensive than the car that the utility would have bought for its own purposes.

Under the Commission's pole attachment rules, cable companies are required to pay only 7.4% of the costs associated with the common space on a pole (inappropriately termed "unusable" space) that is necessary to stabilize the pole, elevate cable's attachments, and provide 40 inches for the "communications worker safety zone" that would not be needed at all but for the presence of communications workers near energized utility lines. Cable's aerial attachments clearly benefit from all of this common space, but electric utilities are required to bear almost all (92.6%) of these costs. The cable industry gets a virtual "free ride."

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<sup>2</sup> NCTA Comments at 12.

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The Telecom attachment rate is an improvement (since it allocates 2/3 of most common space costs equally), but similarly fails to reflect the value of the pole distribution system to telecom attachers or the significant costs that they avoid by not being required to build their own pole distribution systems. They, too, are permitted to climb on board utility pole distribution systems for a fraction of the fair cost. Additionally, the FCC's "presumed number of attachers" of 3 or 5 (based on whether a system is "rural" or "urban") falsely inflates the number of attachers used for rate calculation purposes and thereby reduces the applicable Telecom rate, all to the detriment of electric utilities and their rate payers.

To the extent that government mandated subsidies were appropriate to jump-start the cable and telecom industries in the early days of pole attachments, those days are long gone. Yet Comcast, Time Warner Telecom and other media giants continue to get access to the most basic component of "their" pole distribution systems for an artificially low, government-mandated fee that unfairly discriminates against electric utilities and their consumers.

The *Coalition* supports the Commission's efforts to create a single, broadband rate, but, as noted in your Separate Statement, electric consumers should not be subsidizing broadband companies. The *Coalition's* proposed rate for broadband attachers (adopted by the City of Seattle and affirmed by the Washington State courts) eliminates the historic subsidy of cable and telecom companies by requiring that costs associated with 100% of the common space on poles (including the "communications worker safety zone" space) be shared equally by and among all attachers. Anything less than an equal sharing of costs related to the common space on the poles will result in an unjustified subsidy to whichever industry is favored by the Commission.

### Joint Use

Unlike third party pole attachments, Joint Use involves arrangements between two pole-owning entities -- electric utilities and Incumbent Local Exchange Carriers ("ILECs"). For almost 100 years, electric utilities and ILECs have worked together to construct a mutually beneficial, multi-million mile aerial pole distribution system throughout the country that is both safe and efficient. The Commission should not upset this longstanding balance between pole owners by misconstruing its statutory authority as requested by USTelecom, the national trade association representing ILEC interests.

US Telecom argues that ILECs have become the "victims" of abuse by electric utilities under Joint Use. Far from being victimized, however, ILECs in fact have exploited the Joint Use process. Within the last few years, as the number of their wireline subscribers has dwindled, ILECs have abandoned their traditional joint use responsibilities and required electric utilities to install the vast majority of new poles, obtain necessary permits, provide emergency responses, police the system and ensure safe operations. The ILECs' relatively recent disassociation from



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Joint Use, not any “abuse of market power” by electric utilities, is the reason why utilities have come to own a higher percentage of Joint Use poles.

USTelecom’s claim that the Pole Attachment Act mandates regulated rates for ILECs attaching to electric utility poles fails the laugh test. It ignores explicit statutory language, as well as 10 years of history at the FCC and in the courts. The ILECs themselves only recently “discovered” their claimed loophole.

While USTelecom would guarantee regulated rates for ILECs on electric utility poles, it would offer no parallel rights for electric utilities that remain dependent on access to ILEC-owned poles. Stripped of similar leverage, electric utilities would be left to fend for themselves and likely would find themselves paying exorbitant rates to ILECs for parallel attachment rights.

### Penalties

Speed to market and cutting costs are driving the rollout of new communications services as cable companies, CLECs and ILECs compete for customers. Unfortunately, electric system safety and reliability often has taken a back seat.

As a result, *Coalition* members are faced with huge numbers of unauthorized attachments, countless NESC clearance violations, improper pole guying, ungrounded messenger wires, excessive overlashing, improper use of boxing and extension arms, improper installation of equipment, improper hole drilling, the displacement and damage of utility equipment, customer outages, and a host of additional safety violations and poor construction practices by attachers.

The cable industry characterizes these serious, systemic problems, which are well known throughout the electric utility industry, as “trumped up charges.”<sup>3</sup> This, of course, comes from the same industry that argues “Congress has given the Commission no role whatsoever in protecting electric ratepayers.”<sup>4</sup>

The FCC’s existing rules do little to assist utilities in addressing these problems. The Commission’s unauthorized attachment rulings actually *encourage* unauthorized attachments, since the worst that can happen is that unauthorized attachers will be required to pay rentals that they should have been paying all along – if they get caught.

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<sup>3</sup> Time Warner Cable Comments at iv.

<sup>4</sup> NCTA Comments at 12.

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The *Coalition* recommends that the Commission authorize real penalties to combat the epidemic of unauthorized attachments, adjusted to encourage attachers to comply with pole owner audits:

- \$100 per unauthorized attachment plus 5 years annual rental if an unauthorized attachment is found and the attacher has not participated in a required audit;
- \$50 per unauthorized attachment plus 5 years annual rental if the attacher does participate in the audit or identifies the unauthorized attachment on its own.

To combat safety violations, the Commission should require attachers to comply with industry standard safety codes as well as the utilities' own safety and operational requirements. To promote compliance, the Commission should clarify that pole owners may impose penalties for safety violations in the amount of \$200 per violation.

The Commission also should make clear that utility pole owners should not be "stuck" doing work that the attachers should have done themselves (as is too often the case). Pole owners should be free to charge "Imposition Costs" that reflect the cost of materials and equipment, fully loaded direct and indirect labor, engineering, supervision and overhead, plus an additional 50%, when they are required to perform work that attachers have failed to do in the first place.

### Fibertech

Fibertech's proposed rules are based on the concept that attachers -- not utilities -- know best how to construct, operate, manage and maintain electric distribution systems. This notion is as dangerous as it is far fetched. Decisions regarding the safe construction and reliable operation of electric utility systems must be made by individual utilities based on their experience and best judgment, not by attachers motivated by profit and an expanding subscriber base.

For example, Fibertech's proposals regarding boxing, extension arms and drop poles raise significant operational concerns, and its proposal for unfettered access to manholes and conduit fails to make the very important distinction between relatively safe non-energized ILEC underground facilities and highly energized electric underground facilities that require significant safeguards.

The deadlines proposed by Fibertech for field surveys and make ready work would force utility personnel to perform communications attacher work before the utility's own electric work. Allowing attachers to hire outside contractors is no solution and would raise a host of additional concerns regarding work priorities, quality of work, safety and labor relations.

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The *Coalition of Concerned Utilities* agrees completely with your view that the safety and reliability of critical electric infrastructure is of paramount concern in this proceeding. Pole attachments are a deadly serious, critically important matter, with broad implications for the reliability of the nation's electric grid and the personal safety of those who work on or near poles, attachments and energized lines.

The Commission's regulations should reflect these concerns.

We appreciate your efforts and those of other Commissioners to protect electric utilities and their ratepayers during the course of this proceeding, and would be pleased to meet with you or your staff at your convenience to discuss these important issues further.

  
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The Honorable Deborah Taylor Tate  
The Honorable Robert M. McDowell  
Ms. Marlene H. Dortch, Secretary



# Pole Attachments At A Glance

## The "Coalition of Concerned Utilities"

- Allegheny Power
- Baltimore Gas and Electric
- Dayton Power & Light
- FirstEnergy
- Kansas City Power & Light
- National Grid, and
- NSTAR

*Collectively, the Coalition serves approximately 12,800,000 electric customers and owns, in whole or in part, more than 7,200,000 electric distribution poles*

## Overview

The Coalition is extremely concerned that the Federal Communications Commission's Notice of Proposed Rulemaking in **WC Docket No. 0-245** may exacerbate an already troubling pole attachment and joint use regulatory environment and jeopardize the safe and efficient operation of the nation's electric utility distribution systems. Although promoting the deployment of cable, telecommunications and broadband services is a worthy goal, it should not occur at the expense of electric utilities and their ratepayers.

The Commission's current pole attachment rate methodology unduly favors cable and telecom attackers. It is akin to the utility paying full price for a car while attackers remain free to climb on board and chip in a small percentage annually for gas and other expenses. Not only that, but the car itself (which must be bigger, faster and stronger to accommodate the added passengers) is considerably more expensive than the car that the utility would have bought for its own purposes.

At this late stage of "CATV" development – especially in the midst of an energy crisis and deep concerns over raising electric utility rates – there is no public policy justification for electric utility ratepayers to continue their longstanding subsidization of communications giants such as Comcast and Time Warner Cable.

## Cable and Telecom Subsidies

Under the FCC's current rate formula, cable companies are required to pay only 7.4% of the costs associated with common space on a pole (inappropriately termed "unsuitable" space) that is necessary to stabilize the pole, to elevate all attachments, and to provide the 40 inches of "communications worker safety zone" space that would not be needed at all but for the presence of communications attachments.

The FCC's Telecom attachment rate offers some improvement (since it allocates 2/3 of most common space costs equally) but similarly fails to reflect the value of the pole distribution system to telecom attackers or the significant costs that they avoid by not being required to build their own pole distribution systems.

All aerial attachments benefit from the common space, yet electric utilities are required to bear the lion's share of the costs necessary to elevate the attachments and support them. Attackers get a "free ride."

## Better, Fairer Attachment Rates

The FCC should not pick "winners" and "losers" between and among electric utilities, cable companies and telecom companies. Anything less than an equal sharing of costs related to the common space on utility poles results in an unjustified subsidy to whichever industry is deemed by the Commission to be the favored attacker.

## Joint Use

Joint Use, unlike third party pole attachments, involves arrangements between two similarly situated pole owning entities – electric utilities and Incumbent Local Exchange Carriers ("ILECs"). ILECs are different than typical attackers.

For almost 100 years, electric utilities and ILECs have worked together to construct a mutually beneficial, multi-million mile aerial pole distribution system that is both safe and efficient. The Commission should not upset this longstanding balance between pole owners by misconstruing its statutory authority as requested by USTelecom, the national trade association of ILECs.

## Penalties

Coalition members are faced with huge numbers of unauthorized attachments, countless NESC clearance violations, improper pole guying, ungrounded messenger wires, excessive overflashing, improper use of boxing and extension arms, improper installation of equipment, improper hole drilling, the displacement and damage of utility equipment, customer outages, and a host of additional safety violations and poor construction practices by attackers.

The FCC's existing rules do little to assist utilities in addressing these problems. The Coalition recommends substantial penalties to combat unauthorized attachments and safety violations. Attackers should be required to comply with industry standard safety codes as well as the utilities' own safety and operational requirements.

## Fibertech

Fibertech's proposed rules are based on the concept that attackers, not utilities, know best how to construct, operate, manage and maintain electric distribution systems. This notion is as dangerous as it is far fetched. Decisions regarding the safe construction and reliable operation of electric utility systems must be made by individual utilities based on their experience and best judgment, not by attackers.

## For Further Information

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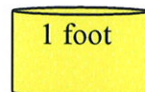
## Pole Attachment Rate Formula:

### Usable Space

(13 ½ feet)

#### FCC FORMULA

- Electric Space (Red)
- Communications Worker Safety Zone (Blue)
- CLEC Space (Green): 7.4% (1/13.5)
- Cable Space (Yellow): 7.4% (1/13.5)
- ILECs (Joint Use) (Orange)



#### COALITION PROPOSAL

- Remove Communications Worker Safety Zone from "Usable" Space and include in Common ("Unusable") Space, which will decrease the Usable Space from 13 ½ to 10.2 feet.
- CLEC Space (Green): 9.8% (1/10.2)
- Cable Space (Yellow): 9.8% (1/10.2)

## **Pole Attachment Rate Formula: Common (“Unusable”) Space**

**(24 feet)**

### **FCC FORMULA**

- Cable: 7.4%
- CLEC:

$$\frac{2}{3} \times \frac{100\%}{\# \text{ of Attachers}}$$

- If 4 attachers, CLEC pays 16.67%

### **COALITION PROPOSAL**

- Include the Communication Worker Safety Zone as Common (“Unusable”) Space.
- Split common costs equally, so that:
  - Cable – 25%
  - CLEC – 25%

**Ground Level**

**18 feet**

**6 feet**